

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GENESIS HILL,

Petitioner,

v.

BETTY MITCHELL, Warden,

Respondent.

Case No. 1:98-cv-452

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Terence P. Kemp

ORDER

Petitioner had pending before this Court a death penalty habeas corpus action pursuant to 28 U.S.C. § 2254. This Court on March 29, 2013 issued judgment in favor of Petitioner on part of his fourth ground for relief and in favor of Respondent on the remainder of Petitioner's claims. (ECF No. 240.) The matter is now before this Court upon Petitioner's motion to set a deadline for filing a motion for a certificate of appealability (ECF No. 247).

As indicated above, the Court on March 29, 2013 issued a conditional writ of habeas corpus directing the State within one-hundred, eighty (180) days of the date of the Court's order to either release Petitioner or give him a new trial. The Court denied relief on the remainder of Petitioner's claims. Respondent filed a notice of appeal on April 5, 2013 (ECF No. 242), after which Petitioner on April 19, 2013 filed a notice of appeal (ECF No. 245) and notice of a cross appeal (ECF No. 245).

An appeal from the denial of a habeas corpus action may not proceed unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Thus, with respect to the claims upon which this Court denied relief, Petitioner filed the instant motion to set a deadline for filing his motion seeking a certificate of appealability. (ECF No. 247.) Specifically,


Petitioner sought ninety (90) days, until July 18, 2013, to file his motion.

Respondent initially opposed Petitioner's motion, explaining that Respondent could not agree to the lengthy period of time that Petitioner requested, absent an order by this Court staying execution of the issuance of the conditional writ pending the completion of appellate proceedings. (ECF No. 250, at PAGEID #: 3144.) Subsequently, the Court on May 16, 2013 did issue an Opinion and Order staying execution of its judgment, pending completion of all appellate proceedings. (ECF No. 252.) Following that action, Petitioner later the same day filed a reply indicating that Petitioner contacted Respondent and Respondent no longer opposes Petitioner's motion. (ECF No. 252, at PAGEID #: 3157.)

Although the time requested by Petitioner at first glance seems excessive, the Court recognizes that the number and complexity of the claims of which Petitioner may seek further review on appeal justify a lengthy period of time for the preparation of a motion for a certificate of appealability. Any excessiveness in the length of time requested by Petitioner is mitigated by the fact that Respondent does not oppose the request.

For the foregoing reasons, Petitioner's motion to set a deadline for filing a motion for a certificate of appealability (ECF No. 247) is **GRANTED**. Petitioner shall have until and including July 18, 2013 to file any motion for a certificate of appealability. The motion shall then be briefed in accordance with the local rules.

IT IS SO ORDERED.

 5-20-2013
EDMUND A. SARGUS, JR.
United States District Judge